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**To: Identity Theft Prevention Study Committee**  
**From: William P. Angrick II, Citizens' Aide/Ombudsman**  
**Date: December 2, 2008**  
**Re: Summary of Ombudsman Recommendations**

**#1 – Iowa's public records law needs to define "personal information."**

The Ombudsman recommends including a definition for "personal information" in Iowa's open records law and offers for your consideration the same definition for "personal information" found in the security breach legislation enacted earlier this year, SF 2308.

"Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements that relate to the individual if any of the data elements are not encrypted, redacted, or otherwise altered by any method or technology in such a manner that the name or data elements are unreadable:

- a. Social security number.
- b. Driver's license number or other unique identification number created or collected by a government body.
- c. Financial account number, credit card number, or debit card number in combination with any required security code, access code, or password that would permit access to an individual's financial account.
- d. Unique electronic identifier or routing code, in combination with any required security code, access code, or password that would permit access to an individual's financial account.
- e. Unique biometric data, such as a fingerprint, retina or iris image, or other unique physical representation or digital representation of biometric data.

"Personal information" does not include information that is lawfully obtained from publicly available sources, or from federal, state, or local government records lawfully made available to the general public.

**#2 – Iowa law should give government bodies the authority and discretion to redact certain personal information from a public record.**

The Ombudsman recommends giving government bodies the authority and discretion to redact certain personal information from a public record. The following amended language, applicable only to social security numbers, was included in 2007 legislation, SSB 1223, proposed by the Ombudsman.

Section 1. NEW SECTION. 22.21 SOCIAL SECURITY NUMBERS IN PUBLIC RECORDS.

1. To the greatest extent feasible, a government body shall not disclose a person's social security number unless the disclosure is authorized by law.
2. A government body shall make reasonable efforts to exclude social security numbers from public records, as follows:
  - a. Exclude social security numbers on licenses, permits, and other documents that may be readily observed by the public.
  - b. Give individuals the option not to submit a social security number to the government body unless submission of the social security number is essential to the provision of services by the government body or is required by law.
  - c. Any other efforts to prevent social security numbers from being included in public records and to protect such numbers from disclosure.
3. If a public record contains a social security number, the government body shall, to the extent practicable, make reasonable efforts to redact the social security number prior to releasing the record if such redaction does not materially affect the value of the public record and is permitted by law. The redaction of a social security number from a public record shall not delay public access to the public record except for the time required to perform the actual redaction. As used in this section, "redact" means to render the social security number unreadable or truncated so that no more than the last four digits of the social security number may be accessed as part of the record.
4. A government body that solicits information containing a person's social security number or that is the lawful custodian of public records containing social security numbers shall, if subject to chapter 17A, adopt rules or, if a political subdivision or other public body, adopt guidelines to administer the use and disclosure of social security numbers consistent with this section.

**#3 – Iowa law needs to specify who has access to view unredacted versions of public records.**

If government bodies are given the authority and discretion to redact certain personal information from a record, the Ombudsman realizes in some situations a party may need an unredacted version of the original record. In those situations, the law will need to specify who is authorized to view an unredacted public record.

No draft language suggested.

**#4 – State agencies should regularly review and determine compliance with section 22.11 of the Iowa Code, the Iowa Fair Information Practices Act. Iowa law should extend these requirements to local government by revising section 22.12.**

The Ombudsman recommends revising section 22.12 to require a subdivision or public body which is not a state agency as defined in chapter 17A to adopt policies regarding fair information practices as defined in section 22.11.

**22.12 POLITICAL SUBDIVISIONS.**

A political subdivision or public body which is not a state agency as defined in chapter 17A is ~~not~~ required to adopt policies to implement section 22.11. ~~However, if a public body chooses to adopt policies to implement section 22.11~~ the policies must be adopted by the elected governing body of the political subdivision of which the public body is a part. The elected governing body must give reasonable notice, make the proposed policy available for public inspection and allow full opportunity for the public to comment before adopting the policy. If the public body is established pursuant to an agreement under chapter 28E, the policy must be adopted by a majority of the public agencies party to the agreement. These policies shall be kept in the office of the county auditor if adopted by the board of supervisors, the city clerk if adopted by a city, and the chief administrative officer of the public body if adopted by some other elected governing body.

**#5 – Government bodies should be given the authority to charge a flat rate, a subscription fee, a per-transaction fee or a combination thereof for “enhanced electronic access.”**

The Ombudsman recommends that government bodies be given the authority to charge a flat rate, a subscription fee, a per-transaction fee or a combination thereof for “enhanced electronic access.” This may also be an opportunity to create a barrier to identity theft. Legislation enacted in Pennsylvania states if an agency offers enhanced electronic access to public records the agency may establish user fees specifically for the provision of the enhanced electronic access, but only to the extent that the enhanced electronic access is in addition to making the public records accessible for inspection and duplication by a requester as required by this act. The Ombudsman suggests modifying the following language found in Pennsylvania law for inclusion in Iowa’s public records law.

Enhanced electronic access – If an agency offers enhanced electronic access to records in addition to making the records accessible for inspection and duplication by a requester as required by this act, the agency may establish user fees specifically for the provision of enhanced electronic access, but only to the extent that the enhanced electronic access is in addition to making the records accessible for inspection and duplication by a requester as required in this act. The user fees for enhanced electronic access may be a flat rate, a subscription fee for a period of time, a per-transaction fee, a fee based on the cumulative time of system access or any other reasonable method and any combination thereof. The user fees for enhanced electronic access must be reasonable, must be approved by the Office of Open Records and may not be established with the intent or effect of excluding persons from access to records or duplicates thereof or of creating profit for the agency.

**#6 – Government bodies should be required to take reasonable precautions when disposing of confidential records or records containing personal information.**

The Ombudsman recommends amending Chapter 22 of the Iowa Code to require that government bodies take reasonable precautions when disposing of confidential records or records containing personal information, regardless of the format of the record.

**PROTECTION OF PERSONAL INFORMATION – DESTRUCTION OF RECORDS**

A government body shall take all reasonable steps to destroy or arrange for the destruction of records within its custody or control containing personal information that is no longer to be retained by the government body by shredding, erasing, or otherwise modifying the personal information in the records to make it unreadable or undecipherable through any means.

**#7 – The creation of a permanent Public Records, Open Meetings, and Privacy (PROMP) Advisory Committee.**

The Ombudsman recommends establishing a permanent Public Records, Open Meetings, and Privacy (PROMP) Advisory Committee. This proposal is modeled after legislation adopted in 2005 by the Maine General Assembly creating a permanent advisory committee, the Right to Know Advisory Committee (Committee). The Committee provides oversight authority for a broad range of activities associated with Maine’s Freedom of Access laws, including:

- Providing guidance in ensuring access to public records and public proceedings;
- Serving as the central source and coordinator of information about Maine’s Freedom of Access laws and the people’s right to know;
- Supporting the provision of information about public access to records and proceedings via the Internet;
- Serving as a resource to support training and education about Maine’s Freedom of Access laws; and
- Reporting annually about the state of Maine’s Freedom of Access laws and the public’s access to public proceedings and records.

The Committee’s activities address the on-going struggle between access to public records and confidentiality, including reviewing the practices of government bodies related to collection and disclosure of social security numbers. The Committee also reviews the provisions of the Maine’s access laws on a regular schedule such as examining public records exemptions and definitions. While the Committee can recommend changes in the law, they have no enforcement authority. The Committee in Maine primarily operates outside of regularly scheduled session in sessions open to the public and appropriations for the Committee is \$4040 per year with legislative employees and an intern staffing the committee.

The creation of a PROMP Advisory Committee in Iowa will provide the permanent broad oversight necessary to conduct a thorough review of Iowa laws and policy and practice issues dealing with public records and open meetings, while ensuring privacy of personal information. To this end, the Ombudsman offers the following legislative language for your consideration:

## **Public Records, Open Meeting, and Privacy (PROMP) Advisory Committee**

**1. Advisory committee established.** The Public Records, Open Meetings, and Privacy Advisory Committee, referred to in this chapter as "the advisory committee," is established to serve as a resource for ensuring compliance with Iowa laws dealing with public records and open meetings, including but not limited to, chapter 21 and chapter 22, referred to in this chapter as the "freedom of information laws." In addition, the committee is charged with upholding the integrity of the purposes underlying these laws and considering the effects openness has on privacy of individuals as it applies to all public entities in the conduct of the public's business.

**2. Membership.** The advisory committee consists of the following members:

- A. One Senator, appointed by the majority leader of the Senate, in consultation with the President of the Senate;
- B. One Senator, appointed by the minority leader of the Senate;
- C. One member of the House of Representatives, appointed by the Speaker of the House;
- D. One member of the House of Representatives, appointed by the minority leader of the House;
- E. One representative of municipal interests, appointed by the President of the Senate;
- F. One representative of county interests, appointed by the Speaker of the House;
- G. One representative of school interests, appointed by President of Senate;
- H. One representative of law enforcement interests, appointed by the Speaker of the House;
- I. One representative of the interests of State Government, appointed by the Governor;
- J. One representative of a statewide freedom of information advocacy organization, appointed by the Speaker of the House;
- K. Two representatives of newspaper and other press interests, one appointed by the President of the Senate and one appointed by the Speaker of the House;
- L. Two representatives of broadcasting interests, one appointed by the President of the Senate and one appointed by the Speaker of the House;
- M. Two representatives of the public, one appointed by the President of the Senate and one appointed by the Speaker of the House; and
- N. The Attorney General or the Attorney General's designee.
- O. The Citizens' Aide/Ombudsman or the Ombudsman's designee.
- P. One representative from Department of Administrative Services who serves as a specialist in electronic records.
- Q. One representative from the Iowa State Bar Association.

The advisory committee shall invite the Chief Justice of the Supreme Judicial Court to designate a member of the judicial branch to serve as a member of the committee.

Appointments to the committee shall comply with sections 69.16 and 69.16A.

**3. Terms of appointment.** The terms of appointment are as follows.

- A. Members who are legislators are appointed for the duration of the legislative terms of office in which they were appointed.

- B. Except as provided in paragraph a, members are appointed for terms of 3 years.
- C. Members may serve beyond their designated terms until their successors are appointed.

**4. First meeting; chair.** The majority leader of the senate shall call the first meeting of the advisory committee as soon as funding permits. At the first meeting, the advisory committee shall select a chair from among its members and may select a new chair annually.

**5. Meetings.** The advisory committee may meet as often as necessary but not fewer than 4 times a year. A meeting may be called by the chair or by any 4 members. A meeting of the majority of the members shall be subject to the open meetings law, and a majority of the members shall constitute a quorum of the advisory committee.

**6. Duties and powers.** The advisory committee:

A. Shall provide guidance in ensuring access to public records and proceedings and help to establish an effective process to address general compliance issues and respond to requests for interpretation and clarification of the laws;

B. Shall serve as the central source and coordinator of information about the freedom of access laws and the people's right to know. The advisory committee shall provide the basic information about the requirements of the law and the best practices for state agencies and political subdivisions. The advisory committee shall also provide general information about the freedom of information laws for a wider and deeper understanding of citizens' rights and their role in open government. The advisory committee shall coordinate the education efforts by providing information about the freedom of information laws and whom to contact for specific inquiries;

C. Shall serve as a resource to support the establishment and maintenance of a central publicly accessible website that provides the text of the freedom of information laws and provides specific guidance on how a member of the public can use the law to be a better informed and active participant in open government. The website must also include, or contain a link to, a list of statutory exceptions to the public records laws;

D. Shall serve as a resource to support training and education about the freedom of information laws. Although each agency is responsible for training for the specific records and meetings pertaining to that agency's mission, the advisory committee shall provide core resources for the training, share best practices experiences and support the establishment and maintenance of online training as well as written question-and-answer summaries about specific topics;

E. Shall report to the Governor and General Assembly regarding the freedom of information laws both existing laws and in proposed legislation;

F. Shall examine inconsistencies in statutory language and may recommend standardized language in the statutes to clearly delineate what information is not public and the circumstances under which that information may appropriately be released;

G. May make recommendations for changes in the statutes to improve the laws and may make recommendations to the Governor, the General Assembly, and local and regional governmental entities with regard to best practices in providing the public access to records and proceedings and to maintain the integrity of the freedom of information laws and their underlying principles;

- H. Shall serve as an adviser to the General Assembly when legislation affecting freedom of information is considered;
- I. May conduct public hearings, conferences, workshops and other meetings to obtain information about, discuss, publicize the needs of and consider solutions to problems concerning access to public proceedings and records;
- J. Shall review the collection, maintenance and use of records by lawful custodians pursuant to chapter 22 and governmental bodies pursuant to chapter 21 to ensure that confidential records and information are protected and public records remain accessible to the public;
- K. Shall review the retention and destruction by government bodies to ensure confidential records and information are protected; and
- L. May undertake other activities consistent with its listed responsibilities.

**7. Outside funding for advisory committee activities.** The advisory committee may seek grants, appropriations, and outside funding to fund the cost of public hearings, conferences, workshops, other meetings, other activities of the advisory committee and educational and training materials. Contributions to support the work of the advisory committee may not be accepted from any party having a pecuniary or other vested interest in the outcome of the matters being studied.

**8. Compensation.** Legislative members of the advisory committee are entitled to receive the legislative per diem, and reimbursement for travel and other necessary expenses for their attendance at authorized meetings of the advisory committee. Public members not otherwise compensated by their employers or other entities that they represent are entitled to receive reimbursement of necessary expenses and, upon a demonstration of financial hardship, a per diem equal to the legislative per diem for their attendance at authorized meetings of the advisory committee.

**9. Staffing.** The Legislative Services Agency shall provide staff support for the operation of the advisory committee. In addition, the advisory committee may contract for administrative, professional and clerical services if funding permits.

**10. Report.** By January 15, 2010 and at least annually thereafter, the advisory committee shall report to the Governor, and the General Assembly about the state of the freedom of information laws and the public's access to public proceedings and records.